

RINCON SAN LUISENO BAND	:	Order Affirming Decision
OF MISSION INDIANS,	:	
Appellant	:	
	:	
v.	:	Docket No. IBIA 94-156-A
	:	
ACTING SACRAMENTO AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	March 8, 1995

This is an appeal from a June 10, 1994, decision of the Acting Sacramento Area Director, Bureau of Indian Affairs (Area Director; BIA), denying appellant's application for a FY 1994 Small Tribes grant. For the reasons discussed below, the Board affirms the Area Director's decision.

Pursuant to an announcement published in the Federal Register, 58 FR 68696 (Dec. 28, 1993), appellant filed an application for a grant under the Basic Small Tribes component of the Small Tribes grant program. On June 10, 1994, the Area Director notified appellant that its application was not approved. The decision letter stated:

[Appellant] cited all of the four eligibility criteria referenced in Section B.(2)(a)-(d) of the announcement as the basis for its application. However, the application itself failed to demonstrate financial need. In addition, the application stated that [appellant] has inadequate management systems and has operating problems due to unqualified staff. However, the application did not recognize or address this primarily a management problem [sic]. Thus, the application failed to satisfy all of the criteria contained in the section.

Under C.[1](b) Content of Application, the work statement provided a sketch of a plan, but failed to provide a schedule of activities in sufficient detail so as to indicate that some of the problems would be overcome.

(Area Director's June 10, 1994, Decision at 1).

On appeal to the Board, appellant first contends that BIA is estopped from claiming that appellant's application was deficient because the Southern California Agency, BIA, reviewed its application and requested certain additional information, but not the information later found to be inadequate in appellant's application. Appellant argues that "to provide a critique asking for supplementation of the application in certain ways and then to reject the supplemented application on the grounds that it is lacking in other aspects shows that the review itself was deficient and constitutes an abuse of departmental discretion." (Appellant's Opening Brief at 3).

Appellant's contention reflects a basic misunderstanding of the Agency's role in reviewing Small Tribes grant applications. As stated in subsection D(1) of the program announcement, the Agency conducts a preliminary review to ensure that the application meets the basic requirements of the program and includes all required documents. The Agency also notifies applicants of any required documents missing from their applications, in essence giving them a second opportunity to submit a complete application. ^{1/} It does not, however, conduct a substantive review of grant applications. The Agency review, and a second preliminary review conducted at the Area Office, see subsection B(2)(a), simply determine which applications are complete and thus entitled to compete against others. Neither the Agency review nor the preliminary Area Office review guarantees that an application which survives these reviews will also survive the competitive rating process and be funded. The Board rejects appellant's estoppel argument.

Appellant further contends that its application demonstrated financial need, showed that appellant had inadequate management systems or problems operating thereunder, and contained a sufficiently detailed work plan.

The Board has often stated its standard of review in appeals from BIA decisions denying applications for discretionary grants, including Small Tribes grants. Allakaket Village Council v. Acting Juneau Area Director, 27 IBIA 190, 192 (1995), and cases cited therein. In reviewing such discretionary decisions, the Board does not substitute its judgment for that of BIA. Rather, it seeks to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion.

Appellant's application was rated by a panel of three reviewers, who gave it scores of 43, 43, and 55. The reasons for denial given in the Area Director's decision were based on the written comments made by the reviewers. These same reviewers also rated other applications and thus had an opportunity to compare appellant's application with others. Although appellant clearly disagrees with the reviewers' assessment of its application, it has failed to show that the reviewers or the Area Director committed legal error.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's June 10, 1994, decision is affirmed.

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge

^{1/} The Board has held, however, that additional materials cannot be accepted after the filing deadline, because to accept late-filed documents is unfair to those tribes which have submitted timely and complete applications. E.g., Iowa Tribe v. Acting Anadarko Area Director, 27 IBIA 87 (1994).